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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REGINA A. CETRANGELO

Appeal 2009-002595
Application 10/656,953
Technology Center 1700

Decided:¹ June 16, 2009

Before CHUNG K. PAK, PETER F. KRATZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-10. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellant's claimed invention is directed to a method and device for cleaning dental instruments.

Claims 1, 4, and 9 are illustrative and reproduced below:

1. A device for use in the cleaning of dental instruments comprising:
 - a) a finger rest,
 - b) a stem,
 - c) an open container having an exterior surface, an interior surface, and a top, said exterior surface having a girth near the top, said interior surface containing a plurality of prongs, and said top having a protective rim.
4. The device of claim 1, wherein the container contains gauze.
9. A method of cleaning a dental instrument having a pointed tip which comprises:
 - a) holding the device of claim 4 in one hand,
 - b) holding the dental instrument in the other hand,
 - c) placing the pointed tip of the dental instrument inside the open container,
 - d) putting the pointed tip of the dental instrument in contact with the gauze,
 - e) applying pressure to the container to assure firm contact between the instrument and the gauze,

- f) wiping the tip of the instrument on the gauze, and
- g) removing the instrument from the open container.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Williams	4,362,241	Dec. 07, 1982
Wallock	5,471,706	Dec. 05, 1995
Cerroni	5,704,088	Jan. 06, 1998

The following grounds of rejection are maintained by the Examiner:

- I. Claims 1, 3, and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wallock;
- II. Claims 2, 4, and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wallock in view of Williams; and
- III. Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cerroni in view of Wallock and Williams.

We reverse the stated rejections for the reasons set forth in the Appeal Brief, as highlighted below.

Concerning the anticipation rejection of claims 1, 3, and 5, the Examiner maintains that:

Wallock et al. disclose [sic] a device for cleaning dental instrument [sic] comprising a container containing bristles, and a finger grip ribs 22 (girth). The reference discloses that the container includes guard loop 50, and guard collar 45, and protective rim. See col. 3, line 65- col. 4, line 2, col. 5, lines 3-10, 57-59, 29-37, and the claims. The reference discloses the prongs (brush 10) as claimed.

Ans. 3.

Appellant, on the other hand, argues that all of the anticipatorily rejected claims require a device having several separately identified and claimed component parts, including an open container having specified features, a stem, and a finger rest, all of which claimed items the Examiner has not *prima facie* shown to be described as part of a cleaning device according to Wallock (App. Br. 11-13).

Concerning the obviousness rejection of dependent claims 2, 4, and 6, the Examiner acknowledges that Wallock does not teach including gauze in the container, but the Examiner maintains that “Williams discloses an apparatus for disinfection of dental instruments” and Williams “discloses the container and the gauze inside the container. See Figs. 1 and 7, col. 4, lines 61-67, and col. 5, lines 14-25” (Ans. 4).²

Based on the combined teachings of Wallock and Williams, the Examiner maintains that “[i]t would have been obvious for one skilled in the art to use the gauze taught by Williams in the Wallock et al. container to remove any contaminants remains on the instrument” (*id.*).

Contrarily, Appellant contends that the Examiner has not *prima facie* shown that the Examiner’s proposed combination of the teachings of Williams and Wallock would have led one of ordinary skill in the art to a device having all of the component parts called for in claims 2, 4, and 6 based on their dependency on claims 1, 3, and 5, much less a device further including the additional features added by dependent claims 2, 4, and 6, including the gauze required by claims 4 and 6 (App. Br. 13-17).

² Of the three dependent claims subject to this rejection, only rejected claims 4 and 6 require a container including gauze, dependent claim 2 requiring that an open container exterior surface of claim 1 to be textured (*see* claims 2, 4, and 6).

With regard to the Examiner's obviousness rejection of claim 7-10, the Examiner relies on a proposed combination of the teachings of Cerroni, Wallock and Williams. The Examiner maintains that:

Cerroni discloses a method and apparatus for cleaning dental instruments. The reference discloses holding the device in one hand, placing the dental instrument inside the open container, putting the pointed tip of the dental instrument in contact with the bristles, and wiping the tip of the instrument. See col. 3, lines 1-38. The reference discloses the objectives and advantages of the invention to provide an apparatus has many sizes and many geometric volume configurations. See col. 5, lines 21-34. The reference discloses the device is made of flexible material as claimed. See the abstract, col. 5, lines 20-42, col. 6, lines 11-30, and claims 2, 11.

The reference does not teach the container containing gauze, the girth, and the prongs as claimed.

Ans. 4-5.

In light of the additional teachings of Wallock and Williams, the Examiner asserts that:

It would have been obvious for one skilled in the art to use the gauze taught by Williams and the girth and prongs taught by Wallock et al. in the Cerroni container to enhance the cleaning. This also because the brush element taught by Cerroni may be absorbent and made of a material such as a rough sponge material, ----, or a rough cloth material such as terry cloth. See col. 6, lines 28-32. The reference also teaches securing the brush element. It would have been obvious for one skilled in the art to use the gauze as absorbent material in [the] Cerroni container because Cerroni's brush may be made of absorbent material, the girth (ribs (44)) taught by Wallock et al. in the Cerroni's apparatus to enhance the holding of the apparatus and therefore enhance using the apparatus during the cleaning. The barrier 24 (col. 6, lines 53-58) taught by Cerroni is equivalent to the prongs as claimed.

Ans. 5-6.

In opposition, Appellant argues that the Examiner has not prima facie established that the Examiner's proposed combination of the teachings of Cerroni, Williams and Wallock would have led one of ordinary skill in the art to a device having all the component parts required by the rejected claims, including a device comprising a stem, a finger rest and an open container with prongs, much less a device or method of using a device further including the additional features of claims 8-10 (App. Br. 17-20).

ISSUES

Has Appellant established that the Examiner has reversibly erred by failing to show prima facie anticipation of claims 1, 3 and 5 over Wallock?

Has Appellant established that the Examiner reversibly erred by failing to show that the proposed combination of Wallock and Williams would have prima facie rendered the subject matter of any of claims 2, 4, or 6 prima facie obvious?

Has Appellant established reversible error in the Examiner's assertion that the proposed combination of Cerroni, Wallock and Williams would have rendered the subject matter required by any of claims 7-10 prima facie obvious?

PRINCIPLES OF LAW

It is well settled that the burden of establishing a prima facie case of non-patentability resides with the Patent and Trademark Office (PTO). *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

"When the applicant states [in his or her specification] the meaning that the claim terms are intended to have, the claims are examined with that meaning" *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

“To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

“‘[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’” *KSR Int’l v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

FINDINGS OF FACT

In addition to factual findings set forth elsewhere in this Opinion, the following factual findings are made based on a preponderance of the evidence of record:

The Specification provides that:

[t]he device of the present invention is an open container into which dental gauze may be placed. The device is made up of a finger rest, a stem, and an open container having a girth near the open end and a protective rim at the open end. Protruding prongs on the inner surface of the open container aid in keeping the gauze in place. The device is made of a flexible material which allows pressure to be put on the gauze for assuring firm contact between the gauze and the instrument.

(Spec. ¶ 0022).

Wallock discloses an apparatus (9) for cleaning dental instruments including a tubular container (17) housing a brush (10) for cleaning the instrument, wherein the tubular housing includes spaced finger grip ribs (22) intermediate the ends thereof, and an upper entry end cap assembly (23)

(col. 3, ll. 35-65). A flushing liquid (35) can be provided in a sump area (19) of the cleaning device (col. 4, ll. 14-19).

Williams discloses an apparatus for the disinfection of medical and dental instruments using cold disinfection solution and a gauze liner bonded to an envelope (Abstract; Fig. 2, elements 11, 20). The envelope can include two chambers (12 and 13) divided by a heat seal (14), with chamber (12) containing crushable capsules (16-18) containing disinfecting solution components (col. 2, l. 54-col. 3, l. 56; Figs. 2 and 3). Williams teaches/suggests several alternative embodiments, including one wherein a reservoir of cold disinfectant solution is provided (col. 4, l. 61-col. 5, l. 26, Fig. 7).

Cerroni teaches or suggests a hand-held apparatus including a flexible sealed chamber including a brush element for manipulating medical and dental instruments during the cleaning of the instrument upon its insertion into the chamber (Abstract, col. 2, l. 50 - col. 3, l. 38, Figs. 1-10). Cerroni teaches that the housing can be made from plastic material and that the brush element may be absorbent and made from rough material including sponge, wool, or cloth (col. 6, ll. 11-32). A breakable bubble (20) of cleansing fluid may be included with the device (col. 6, ll. 36-42, Figs. 6 and 7).

ANALYSIS

Rejection I

The Examiner refers to “col. 3, lines 60-65” and “claims 1 and 3” of Wallock for a description of an open container corresponding to the open container required by anticipatorily rejected claims 1, 3, and 5 (Ans. 6). In

these sections of Wallock, a tubular casing (container 17) or housing tube (17), is variously set forth by Wallock. However, the Examiner also refers to element 17 of Wallock as describing Appellants' claimed stem, which is a separate element from the open container that is also called for in the rejected claims. In this regard, Appellant's drawing Figure 1 shows stem (6) and finger rest (4) as distinct elements from the open container (8) portion of the claimed cleaning device. Giving rejected claims 1, 3, and 5 their broadest reasonable construction consistent with the Specification, the Examiner has not fairly explained how the element (17) of Wallock can comprise both a stem and the separately claimed open container portion of the claimed device.

Accordingly, we reverse the Examiner's anticipation rejection for failing to present a prima facie case establishing lack of novelty of the claimed device over Wallock.

REJECTION II

Concerning the Examiner's rejection of dependent claims 2, 4, and 6, the Examiner additionally relies on the further teachings of Williams for allegedly suggesting the obviousness of using a gauze liner of Williams in the cleaning device of Wallock. However, the Examiner does not further explain how Williams in combination with Wallock would have rendered the claimed cleaning device including a stem, a finger rest, and an open container obvious to one of ordinary skill in the art. Thus, we need not reach the question as to whether the substitution or addition of the gauze of Williams for the brush of Wallock (which question only applies to rejected dependent claims 4 and 6) would have been obvious to one of ordinary skill

in the art at the time of the invention, because the Examiner has not even fairly explained how Wallock with or without Williams, teaches or suggests a cleaning device including a stem, a finger rest, and an open container, as required by rejected claims 2, 4, and 6.

On this record, we reverse the Examiner's obviousness rejection over Wallock and Williams.

Rejection III

All of the rejected claims 7-10 require a device or a method employing the device wherein the device including a finger rest, a stem, and an open container, which open container includes a top with a protective rim, and an interior surface containing a plurality of prongs as part thereof.

As argued by Appellant, the Examiner has not fairly articulated where Cerroni teaches or suggest a device including a finger rest, a stem, and an open container with a plurality of prongs on an interior surface thereof and a top having a protective rim, as required by all of the claims subject to the Examiner's third stated rejection (App. Br. 18).

As we pointed out above with respect to the Examiner's first and second stated rejections, the Examiner has not reasonably established that Wallock includes both a stem and an open container by referring to tubular container (17) for each of these separate elements. Nor has the Examiner employed Williams for addressing these claim features.

Moreover, the Examiner has not presented a persuasive line of reasoning establishing why one of ordinary skill in the art would have been led to modify the cleaning device and/or method of using the cleaning device of Cerroni by adding bristles, as taught by Wallock, to an inner

surface of the flexible device of Cerroni as a cleaning enhancer because Cerroni already provides for a brush element 14. Furthermore, the Examiner has not fairly explained why an ordinary skilled artisan would have been led to make a wholesale substitution of gauze from Williams, and a brush element, a so called stem, ribs, and protective rim, etc., allegedly from Wallock, for the brush element of Cerroni in a manner so as to result in a device corresponding to the claimed device based on the teachings of the applied references.

Additionally, we note that the Examiner has not reasonably established how the instrument entry barrier (24) of Cerroni corresponds to the claimed prongs located at an open container interior surface (Ans. 6).

On this record, the Examiner has not furnished a sustainable basis for the stated obviousness rejection predicated on the teachings of the applied references.

CONCLUSION

Appellant has shown that:

(1) the Examiner has reversibly erred by failing to show prima facie anticipation of claims 1, 3 and 5 by Wallock;

(2) the Examiner has reversibly erred by failing to show that the proposed combination of Wallock and Williams would have prima facie rendered the subject matter of any of claims 2, 4, or 6 prima facie obvious; and

(3) the Examiner has reversibly erred in asserting that the proposed combination of Cerroni, Wallock and Williams would have rendered the subject matter required by any of claims 7-10 prima facie obvious.

ORDER

The decision of the Examiner to reject claims 1, 3, and 5 under 35 U.S.C. § 102(b) as being anticipated by Wallock; to reject claims 2, 4, and 6 under 35 U.S.C. § 103(a) as being unpatentable over Wallock in view of Williams; and to reject claims 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Cerroni in view of Wallock and Williams is reversed.

REVERSED

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